IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC., Plaintiff	)	
v.	)	C.A. NO.: 03-394 E
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC., Defendants	)	ELECTRONICALLY FILED

PLAINTIFF ACCU-SPEC ELECTRONIC SERVICES, INC.'S MOTION TO DEEM REQUEST FOR ADMISSIONS ADMITTED DUE TO INSUFFICIENT RESPONSES

Plaintiff Accu-Spec Electronic Services, Inc. ("Accu-Spec"), by its attorneys MacDonald Illig Jones & Britton LLP, files this Motion to Deem Request for Admissions Admitted Due to Insufficient Responses pursuant to Rule 36 of the Federal Rules of Civil Procedure, stating as follows:

1. On or about November 25, 2003, plaintiff Accu-Spec filed a Complaint against defendant Central Transport International, Inc. ("Central Transport") and Logistics Plus, Inc. ("Logistics Plus") (collectively "defendants"), alleging that the defendants violated the Carmack Amendment which is now codified at 49 U.S.C. § 14706 and the cargo loss and damage regulations under the Motor Carrier Act pursuant to 49 U.S.C. § 14704 and 49 C.F.R. § 370.1 et seq.

2. On or about July 26, 2004, Accu-Spec served the Requests for Admission attached as Exhibit A on the defendants.[1]

3. On or about August 26, 2004, defendant Logistics Plus served the Responses to Request for Admissions attached as Exhibit B.

4. Although Logistics Plus denied each of Accu-Spec's Request for Admissions, Logistics Plus also answered "the defendant, Logistics Plus, Inc. is without knowledge, information or belief as to the truth of the statement contained in Request for Admissions #1."

5. Logistics Plus, Inc. answered with respect to Request for Admission #1 with respects to each of the Requests for Admissions, not just Request for Admission #1.

6. On or about September 10, 2004, defendant Central Transport served Responses and Objections to Plaintiff's Requests for Admission (First Set). (Exhibit C).

7. As set forth in more detail below, the Responses set forth by Logistics Plus and the Responses and Objections set forth by Central Transport are insufficient as a matter of law. Therefore, the Requests for Admissions must be deemed admitted.

A. Legal Framework

8. Federal Rule of Civil Procedure 36(a), entitled "Request for Admission," states in pertinent part:

> A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relates to statements or opinions of fact or of the application of law to fact including the genuineness of any documents described in the

[1] The documents referenced in the Requests for Admissions are also included in Exhibit A for ease of reference.

> request....If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter...an answering party may not give lack or information or knowledge as a reason or failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable to the party is insufficient to enable the party to admit or deny.

9. Answers that appear to be non-specific, evasive, ambiguous and appear to go to the accuracy of the requested admissions rather than the "essential truth" contained therein are impermissible and must be amended. Defendants must elaborate on the specific unknown facts which prevent them from admitting or denying the statement posed. The mere recitation of Rule 36 language regarding a party's inability to answer is not adequate. Philadelphia Gear Corporation v. Techniweld, Inc., 992 U.S. Dist. Lexus 6555, p. 3 (E.D. Pa. 1992). (Exhibit D).

10. This reasoning applies specifically to Requests for Admissions pertaining to damages incurred by the plaintiff. Id., at 2-3.

11. District Courts inquire whether the substance of the request is given any consideration by the responding party. Responding parties have an obligation to perform a reasonable inquiry as to the facts alleged before stating that it cannot admit or deny any request. Rhone-Poulenc Rorer, Inc. v Home Indemnity Company, 1992 U.S. Dist. Lexus 20249, p. 3 (E.D. Pa. 1992). (Exhibit E).

12. The required inquiry is not limited to the responding party's own resources but to those of co-defendants as well. According to the above Court, because Rule 36 admission requests serve the highly desirable purpose of eliminating the need for proof of issues upon trial, there is a strong incentive against finding an undue burden where the requested party can make the necessary inquiries without extraordinary expense or effort. Id.

13. Finally, a party upon which a Request for Admission is served must make a good faith effort to obtain information so that it can admit or deny the request. Id.

B. Logistics Plus' Responses Must Be Deemed Admitted

14. In the present case, it is apparent that Logistics Plus did not fulfill any of the obligations of a party responding to Requests for Production of Documents.

15. As set forth above, Logistics Plus denied the Request for Admissions, but then stated that it was without sufficient knowledge, information or belief as to the truth of the Request for Admission #1. (See Exhibit B).

16. The Philadelphia Gear Court stated that such a response is impermissible because the defendant contradicts itself by denying the statement and then explaining why it is unable to deny the statement. Therefore, the Philadelphia Gear Court concluded that the defendant was refusing to answer on the basis that, after reasonable investigation, it lacks sufficient information to admit or deny. Philadelphia Gear, p. 3.

17. Logistics Plus did not provide any details of the investigation which it made, and it is apparent that Logistics Plus did not engage in any substantive investigation whatsoever.

18. Logistics Plus did not even make the effort to correctly identify the Request for Admission to which it was responding.

19. For the foregoing reasons, Accu-Spec respectfully requests that the Request for Admissions attached as Exhibit A be deemed admitted by Logistics Plus. Rhone-Poulenc, p. 6.

C. Certain Responses By Central Transport Must Be Deemed Admitted

20. With respect to Request for Admissions No. 3 which states "The charges represented by these invoices were reasonable." Central Transport denied the request on the basis that it called for a legal conclusion. (See Exhibit C, Response to Request for Admission 3).

21. Whether an expense was reasonable or necessary is not a legal conclusion because the particular value of the harm suffered is best left to the factfinder after a careful review of the facts. Sanchez v. U.S. Airways, Inc., 202 F.R.D. 131, 135 (E.D. Pa. 2001).

22. Because defendant Central Transport has not provided a proper basis for objecting to this Request for Admission, Request for Admissions #3 must be admitted. Phone-Poulenc, p. 6.

23. Request for Admission #4 states: "The repair work described in the invoices was reasonably required by the events alleged in the Complaint filed in the above-captioned matter." Central Transport responded: "Central Transport denies many of the allegations in the Complaint, and denies that the documents attached to Plaintiff's Request were all invoices, and therefore denies this request."

24. This is the type of evasive answer rejected by the Court in Philadelphia Gear, see Philadelphia Gear, at p. 3.

25. A defendant should not be permitted to deny a Request for Admission simply because it denies "many of the allegations in the Complaint."

26. Therefore, Request for Admission #4 must be deemed admitted. Rhone-Poulenc, p. 6.

27. In Request for Admission #5, Accu-Spec stated, "Accu-Spec has paid the amounts indicated on the attached invoices." Central Transport denied the request and then responded "after reasonable inquiry of information known or readily obtainable by Central Transport, Central Transport is unable to admit or deny this Request for Admissions.

28. Because Central Transport failed to set forth the basis for its inability to respond to the Request for Admission, this Request for Admission should be deemed admitted. Rhone-Poulenc, p. 6.

WHEREFORE, Accu-Spec Electronic Services, Inc. respectfully requests this Honorable Court grant the foregoing Motion and enter the following Order:

a. Logistics Plus, Inc. is deemed to have admitted that documents A116 through A122 and A127-A129 are invoices from Dage Industries, Inc. to Accu-Spec Electronic Services, Inc.;

b. The invoices described above are authentic;

c. The charges represented by these invoices were reasonable;

d. The repair work described in the invoices was reasonably required by the events alleged in the Complaints filed in the above-captioned matter; and

e. Accu-Spec has paid the amounts indicated on the attached invoices.

Defendant Central Transport International, Inc. is deemed to have admitted the following facts:

a. The charges represented by the invoices attached as documents A116-A122 and A127-A129 were reasonable;

b. The repair work described in the invoices was reasonably required by the events alleged in the Complaint filed in the above-captioned matter; and

c. Accu-Spec has paid the amounts indicated on the attached invoices.

In the alternative, Accu-Spec requests that it be awarded fees and costs incurred in preparing this Motion and presenting evidence at trial to prove the foregoing facts.

CERTIFICATION OF COUNSEL

On September 7, 2005, Thomas A. Pendleton, Esquire contacted John Knox, Esquire, counsel for Logistics Plus, Inc., to discuss the issues raised in this Motion. After Attorney Knox called back one time and Attorney Pendleton was not available, Attorney Pendleton returned his call that afternoon. Attorney Knox never returned Attorney Pendleton's telephone call. On September 7, 2005, Attorney Pendleton called Jeffrey Cohen, Esquire, to discuss the issues raised in this Motion. Attorney Cohen stated that he did not wish to discuss them until after the settlement conference on September 20, 2005. Therefore, counsel for Accu-Spec avers that he has made a good faith effort to resolve the issues raised in this Motion.

Respectfully submitted,

s/Thomas A. Pendleton

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